

# HOUSE BILL No. 1287

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-18-2-176; IC 16-27-5.

**Synopsis:** Home health agency expenditures. Requires a home health agency to spend on direct service costs for its employees at least 73% of the money received from the office of the secretary of family and social services (office) as reimbursement for the provision of home health services to patients. Requires the home health agency to file an annual cost report and an annual audit with the office. Specifies actions the office can take if the home health agency does not comply with these provisions.

**Effective:** July 1, 2008.

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**Orentlicher, Brown C**

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January 15, 2008, read first time and referred to Committee on Public Health.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## HOUSE BILL No. 1287

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A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 16-18-2-176 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 176. (a) "Home health  
3       services", for purposes of IC 16-27-1, has the meaning set forth in  
4       IC 16-27-1-5.

5       (b) "Home health services", for purposes of IC 16-27-5, has the  
6       meaning set forth in IC 16-27-5-2.

7       SECTION 2. IC 16-27-5 IS ADDED TO THE INDIANA CODE AS  
8       A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
9       1, 2008]:

10       **Chapter 5. Direct Service Costs for Home Health Employees**

11       Sec. 1. As used in this chapter, "direct service costs" means  
12       costs that an employer incurs on behalf of an employee who  
13       provides direct home health services to a customer. The term  
14       includes the following:

15       (1) Wages.

16       (2) Benefits paid on behalf of an employee, including the  
17       following:



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- 1 (A) Vacation.
- 2 (B) Sick leave.
- 3 (C) Funeral leave.
- 4 (D) Personal leave.
- 5 (3) Health insurance.
- 6 (4) Life insurance.
- 7 (5) Disability insurance.
- 8 (6) Retirement coverage.
- 9 (7) Federal Insurance Contributions Act (FICA) taxes.
- 10 (8) Federal Unemployment Tax Act (FUTA) taxes.
- 11 (9) Worker's compensation premium payments.
- 12 (10) Travel time and travel reimbursement.
- 13 (11) Unemployment insurance.
- 14 (12) Uniforms.
- 15 (13) Employment training.
- 16 (14) Any other cost approved by the office of the secretary of
- 17 family and social services.
- 18 **Sec. 2. (a) As used in this chapter, "home health services" means**
- 19 **services that:**
- 20 (1) are provided to a patient by:
- 21 (A) a home health agency; or
- 22 (B) another person under an arrangement with a home
- 23 health agency;
- 24 in the temporary or permanent residence of the patient; and
- 25 (2) are required by law to be either:
- 26 (A) ordered by a licensed physician, a licensed dentist, a
- 27 licensed chiropractor, a licensed podiatrist, or a licensed
- 28 optometrist for the service to be performed; or
- 29 (B) performed only by a health care professional.
- 30 (b) The term includes the following:
- 31 (1) Nursing treatment and procedures.
- 32 (2) Physical therapy.
- 33 (3) Occupational therapy.
- 34 (4) Speech therapy.
- 35 (5) Medical social services.
- 36 (6) Home health aide services.
- 37 (7) Other therapeutic services.
- 38 (c) The term does not apply to the following:
- 39 (1) Services provided by a physician licensed under
- 40 IC 25-22.5.
- 41 (2) Incidental services provided by a licensed health facility to
- 42 patients of the licensed health facility.

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(3) Services provided by employers or membership organizations using health care professionals, for the employees, members, and families of their employees or members, if the health or home care services are not the predominant purpose of the employer or a membership organization's business.

(4) Nonmedical nursing care given in accordance with the tenets and practice of a recognized church or religious denomination to a patient who depends upon healing by prayer and spiritual means alone in accordance with the tenets and practices of the patient's church or religious denomination.

**Sec. 3. A home health agency shall spend on direct service costs for its employees at least seventy-three percent (73%) of the money received from the office of the secretary of family and social services as reimbursement for providing home health services to patients. This includes reimbursement by the office of the secretary for home health services provided under the following programs:**

(1) The community and home options to institutional care for the elderly and disabled program under IC 12-10-10.

(2) The state Medicaid program, including a Medicaid waiver, under IC 12-15.

**Sec. 4. (a) A home health agency shall submit annually a cost report to the office of the secretary of family and social services. The cost report must be based on documented expenditures and must include the following:**

(1) The agency's expenditures for the following:

(A) Direct service costs.

(B) Program support costs.

(C) Administrative costs.

(2) An attestation by an authorized representative of the home health agency of the accuracy of the cost report.

**(b) The cost report required in subsection (a) must:**

(1) be submitted not later than six (6) months after the end of the:

(A) calendar year; or

(B) home health agency's fiscal year; and

(2) demonstrate that the home health agency has expended at least seventy-three percent (73%) of the home health agency's total revenues from the office of the secretary on direct service costs.

**(c) The cost report may be submitted as part of the home health**

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1 agency's annual audit required by section 5 of this chapter. Before  
 2 March 1 of each year, the home health agency shall inform the  
 3 office of the secretary of family and social services whether it will  
 4 be filing its cost report on a calendar year basis or on the basis of  
 5 the home health agency's own fiscal year, as provided in subsection  
 6 (b).

7 (d) The office of the secretary of family and social services may  
 8 require the home health agency to contract with an independent  
 9 certified public accounting firm at the home health agency's  
 10 expense to verify the information in the cost report, if the office of  
 11 the secretary has evidence that the information in the cost report  
 12 is:

- 13 (1) inaccurate;
- 14 (2) incomplete; or
- 15 (3) fraudulent.

16 Sec. 5. (a) A home health agency shall provide the office of the  
 17 secretary of family and social services with an annual audit. The  
 18 audit must include the following:

- 19 (1) The home health agency's costs of service, including the  
 20 home health agency's:  
 21 (A) total business costs; and  
 22 (B) total revenue;  
 23 for the previous calendar or fiscal year.
- 24 (2) Any other information determined by the office of the  
 25 secretary of family and social services to be necessary to  
 26 determine the home health agency's costs.

27 The home health agency shall include with the audit documentation  
 28 to support the costs included in the home health agency's audit.

29 (b) The audit required in subsection (a) must be certified by a  
 30 licensed public accountant.

31 (c) The office of the secretary of family and social services shall  
 32 also require the home health agency to perform an audit at any  
 33 time under the following circumstances:

- 34 (1) A member of the general assembly requests in writing an  
 35 audit of the home health agency.
- 36 (2) An employee of the home health agency or a labor  
 37 organization representing an employee of the home health  
 38 agency:  
 39 (A) requests in writing an audit; and  
 40 (B) has evidence showing that the home health agency is  
 41 violating this chapter.

42 Sec. 6. (a) If the office of the secretary of family and social

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services determines that a home health agency has violated this chapter:

(1) the office of the secretary shall notify the home health agency in writing of the violation; and

(2) the home health agency shall file a corrective action plan with the office of the secretary not later than two (2) weeks after the home health agency is notified by the office of the secretary of the violation and corrective action plan requirement.

(b) After an adequate corrective action plan has been submitted by a home health agency, the office of the secretary of family and social services shall monitor the home health agency for at least six (6) months to ensure that the home health agency complies with the corrective action plan.

(c) If the home health agency does not file an adequate corrective action plan or the home health agency does not complete the corrective action plan to the satisfaction of the office of the secretary of family and social services, the office of the secretary shall do at least one (1) of the following:

(1) Terminate the home health agency's participation as a provider in any program for which the office of the secretary reimburses the home health agency for home health services.

(2) If the office of the secretary determines that the home health agency did not adequately implement a corrective action plan, prohibit the home health agency from accepting new patients for which the home health agency would receive reimbursement from the office of the secretary until the home health agency adequately implements the corrective action plan.

(3) Assess a civil penalty of the greater of the following if the office of the secretary determines that the home health agency violated section 3 of this chapter:

(A) Ten percent (10%) of the difference between the direct service costs the provider should have paid to comply with section 3 of this chapter and the direct service costs the home health agency paid.

(B) One thousand dollars (\$1,000).

(d) The office of the secretary of family and social services shall notify the following persons in writing of the steps the office of the secretary takes or plans to take under this section:

(1) The home health agency.

(2) The individual receiving services from the home health

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1           agency or the individual's guardian or legal representative.

2           (3) The employees of the home health agency.

3           (e) The written notice required in subsection (d) must include  
4           the following:

5           (1) A statement specifying the provision of this chapter that  
6           the home health agency has allegedly violated.

7           (2) Notice of the course of action that the office of the  
8           secretary of family and social services is taking or is planning  
9           to take against the home health agency.

10          (3) Notice of the need to plan to obtain services for the  
11          individuals who may be affected by any termination in  
12          services of the home health agency.

13          (4) Notice of the home health agency's right to request a  
14          review of the action under IC 4-21.5.

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